

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY AT&T COMMUNICATIONS)
OF THE SOUTH CENTRAL STATES, INC.)
FOR ARBITRATION OF CERTAIN TERMS)
AND CONDITIONS OF A PROPOSED)
AGREEMENT WITH GTE SOUTH)
INCORPORATED CONCERNING)
INTERCONNECTION AND RESALE UNDER)
THE TELECOMMUNICATIONS ACT OF)
1996)

CASE NO. 96-478

O R D E R

This matter arising upon petition of GTE South Incorporated ("GTE South"), filed November 15, 1996, pursuant to 807 KAR 5:001, Sections 7 and 14, for confidential protection of the cost studies and vendor pricing information filed in support of its arbitration position on the grounds that disclosure of the information is likely to cause GTE South irreparable harm, and for permission to deviate from the procedural requirements of the regulation, and it appearing to this Commission as follows:

This proceeding arises out of the Telecommunications Act of 1996 ("Act") which was enacted by Congress to, inter alia, open the local exchange market to competition. To achieve that objective, the Act requires, among other things, that incumbent local exchange companies provide interconnection to their local telephone networks, unbundle network elements, and provide existing services for resale to competing carriers. The Act requires the incumbent carriers to negotiate rates for the services they provide to the competing

carriers. If rates cannot be agreed upon, Section 252(b)(1) of the Act allows competing carriers to petition a state commission to arbitrate any open issues.

The information sought to be protected was filed by GTE South as part of such an arbitration proceeding which AT&T Communications of the the South Central States, Inc. ("AT&T") instituted by petition to this Commission on September 26, 1996. The information consists of cost studies used by GTE South, detailed price lists, and other information concerning vendor services and materials purchased by GTE South under terms of confidentiality. GTE South has not filed edited copies and is requesting deviation from that requirement. Because of the large volume of the material, the Commission finds that the requested deviation should be granted.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which, if made public, would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Because a major purpose of the Act is to encourage competition in the local exchange market, information which would unfairly benefit potential competitors is entitled to protection. The cost studies and vendor pricing information sought to be protected by

this petition fall into this category. The information would allow competitors to assess GTE South's strengths and weaknesses and allow them to target strategic points in GTE South's business when planning market entry and pricing. Therefore, disclosure of the information is likely to cause GTE South competitive injury and the information is entitled to confidential protection.

GTE South has further requested that a portion of the information submitted be available only to Commissioners and staff. AT&T has not objected to this request. Consequently, the Commission will not order GTE South to submit the information to AT&T at this time. However, should AT&T believe it requires access to the material in order to participate meaningfully in this proceeding, it may present its concerns to the Commission.

Finally, GTE South requests that the information be returned to it at the conclusion of this proceeding. It is, however, necessary that the entire record of this or any proceeding be maintained by the Commission, including portions of the record deemed confidential. Therefore, this request is denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The cost studies and vendor pricing information filed as part of the arbitration proceeding between GTE South and AT&T, which GTE South has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. GTE South may require other parties to this proceeding who wish to receive the information to execute a confidentiality agreement on terms mutually acceptable to the

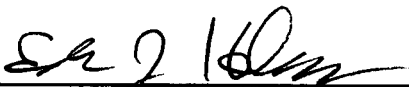
parties or, in the event the parties are unable to agree, on terms to be prescribed by this Commission.


3. Edited copies of the information to be protected shall not be required.

Done at Frankfort, Kentucky, this 5th day of February, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director